

Ret. Date: June 20, 2017	)	SUPERIOR COURT
JOHN DIAS	)	JUDICIAL DISTRICT OF
v	)	STAMFORD/NORWALK
CITY OF NORWALK, REDEVELOPMENT AGENCY OF THE CITY OF NORWALK, CONNECTICUT	)	AT STAMFORD
	)	June 1, 2017

**PLAINTIFF'S COMPLAINT**

**FIRST COUNT:** (Inverse Condemnation)

1. Plaintiff, JOHN DIAS, is the owner of real estate known as 20-26 Isaacs Street, Norwalk, CT, (hereinafter, the "Premises") more particularly described in Exhibit A, attached thereto.

2. Defendant, REDEVELOPMENT AGENCY OF THE CITY OF NORWALK, is a quasi-public agency of the City of Norwalk, and the redevelopment agency duly authorized under Connecticut General Statutes, Section 8-126.

3. On or about July 13, 2004, defendant, CITY OF NORWALK, by its Common Council approved the Wall Street Redevelopment Plan, for the redevelopment of property within the City of Norwalk.

4. On or about March 20, 2006, plaintiff, DIAS, received written notice from defendant, REDEVELOPMENT AGENCY OF THE CITY OF NORWALK, that the Premises was designated for acquisition by defendant, CITY OF NORWALK.

5. On or about March 13, 2007, the Norwalk Common Council approved a "Plan Modification" of the Wall Street Development Plan for the redevelopment of property within the City of Norwalk.

6. On or about November 14, 2007, defendant, CITY OF NORWALK, (hereinafter, the "CITY"), defendant REDEVELOPMENT AGENCY of the CITY OF NORWALK, (hereinafter, AGENCY") and POKO-ISWR DEVELOPERS, LLC (hereinafter "POKO") entered a Land Disposition & Development Agreement (hereinafter, "LDA"), for redevelopment of the Wall Street Area - Development Parcel 2a, in Norwalk, Connecticut.

7. Plaintiff's 20-26 Isaac Street Premises was included within a Conceptual Master Site Plan, was within the boundaries of the Plan area, and was an acquisition property per the LDA.

8. By the LDA, the CITY was responsible for construction of New Street #1 which is to be a street running southeast from Wall Street to Isaacs Street between the Globe Theater and 83 Wall Street, as indicated on the Conceptual Master Site Plan, in coordination with the construction of Phase I improvements.

9. By the LDA, the defendant CITY was responsible for all necessary traffic improvements to route traffic in and out of the Project area via New Street #1, in coordination with the construction of Phase 1 improvements.

10. By the LDA, Plaintiff's 20-26 Isaacs Street, Norwalk, CT premises was to be developed, in part, into New Street #1.

11. By the LDA, that portion of Isaacs Street which was frontage for Plaintiff's 20-26 Isaac Street, Norwalk, CT Premises was to be abandoned by the defendant, CITY.

12. On and prior to March 27, 2008, plaintiff DIAS was informed by POKO, and defendant, AGENCY, that his Premises was determined to be essential to the Wall Street Area Redevelopment project, and that in the event it was not sold to POKO, then the Premises would be taken by the defendant, CITY, by eminent domain.

13. In reliance of written notice by the defendant, AGENCY, and the representations of POKO, on or about March 27, 2008, Plaintiff, DIAS, entered a written contract for the sale of the Premises to POKO, for the purchase price of Two Million Five Hundred Thousand (\$2,500,000.00) Dollars.

14. On or about June, 2008, and then again on or about September 18, 2008, POKO, was unable or unwilling to close on its contract for the purchase of the Premises.

15. Upon information and belief, on or about October 7, 2008, the defendant, CITY, sold its Isaacs Street parking lot and Leonard Street parking lots to defendant, AGENCY, which thereafter conveyed same to defendant, POKO, its affiliate or related entity.

16. On or about June 9, 2009, plaintiff DIAS and POKO, agreed to a First Amendment to their Purchase and Sale Agreement, which amended the contract, *inter alia*, for an August 3, 2009 closing date.

17. On or about August 3, 2009, and POKO, was unable or unwilling to close and defaulted on its contract as amended.

18. On or about October 24, 2014, the defendant, CITY, defendant, AGENCY, and defendant POKO, agreed to a First Amendment to the LDA.

19. On or about December 17, 2014, POKO received a foundation permit from defendant, CITY, for its revised plans which permit, with extension, was to expire on December 17, 2015.

20. On or about January 15, 2015, POKO, by its authorized agent, filed a Zoning Location Survey, depicting proposed revisions, *inter alia*, adding additional residential units to the plan.

21. On or about February 15, 2015, POKO, was in default of the LDA as amended, as it did not obtain all necessary construction and permanent financing required to complete Phase I.

22. On or about March 12, 2015, defendant, CITY, gave notice to POKO, of its default and claimed that it is no longer obligated to construct the infrastructure, including New Street #1, part of which was to be constructed on plaintiff's property.

23. Upon information and belief, defendant, CITY, and/or defendant, AGENCY, waived POKO'S default, and subsequently permitted POKO, to commence its construction of Phase I, and on or about June 12, 2015, POKO commenced the demolition of the Isaacs Street parking

lot, depriving plaintiff and other members of the public the use thereof.

24. On or about June 12, 2015, defendant, POKO, its agents or employees placed Jersey barriers on Isaacs Street barricading it, and severely compromised access to plaintiff's Premises and public parking upon Isaacs Street.

25. Upon information and belief, on or about July 31, 2015, defendant, POKO, failed to comply with terms of the LDA as amended, and upon information and belief was in default thereof for failing to close on its construction loan.

26. On or about August 12, 2015, notwithstanding default, defendant CITY and/or defendant, AGENCY, waived said default and gave POKO, a time line extension.

27. Upon information and belief, the site plan, as modified, violated the zoning regulations of the City of Norwalk and as such violated the terms of the LDA.

28. Notwithstanding such violation, defendant, CITY and defendant, AGENCY, agreed to fast track the abandonment and discontinuance of a portion of Isaacs Street, a city street, and incorporate Phase II property into the modified site plan so as to come into compliance with defendant, CITY'S zoning laws.

29. On or about March 3, 2016, defendant, CITY approved the discontinuance and abandonment of portion of Isaac Street so as to permit POKO to come into zoning compliance.

30. The abandonment and discontinuance of said portion of Isaacs Street a city street and

the incorporation of Phase II property into the modified site plan deprived plaintiff, DIAS of the free and unfettered public use of said Isaacs Street, parking on Isaacs Street, and of parking at the Leonard Street parking lot.

31. The abandonment and discontinuance of said portion of Isaacs Street and the incorporation of Phase II property into the modified site plan deprived plaintiff, DIAS, of temporary and permanent parking in violation of the LDA as amended.

32. On or prior to September 22, 2016, defendant, POKO, stopped work on the redevelopment project affecting neighboring properties, including plaintiff, DIAS' Premises.

33. There has been a destruction or substantial restriction of the beneficial use of the Premises, other than as an asset to the redevelopment project, and the profitability of the Premises has been greatly reduced as a result of the action of the defendant, CITY, and defendant, AGENCY.

34. There has been a taking of plaintiff, DIAS' Premises within the meaning of Article 1st, Section 11 of the Connecticut Constitution, and the 5th Amendment of the U. S. Constitution.

SECOND COUNT: (Unjust Enrichment)

1. - 32. Paragraphs 1. - 32. of the FIRST COUNT are incorporated into this the SECOND COUNT, as if fully restated herein.

33. Plaintiff, DIAS, entered its contract with POKO in reliance on defendant, AGENCY'S representations that should it not be sold to POKO, then it would be acquired by the defendant, CITY, by eminent domain.

34. The defendant, CITY, and defendant, AGENCY, have been unjustly enriched by,

- a. their failure to acquire plaintiff, DIAS' Premises following POKO's default, and delaying or abandoning construction of New Street #1 in coordination of Phase I construction; or
- b. having the plaintiff, DIAS' Premises essentially warehoused for its use without paying just compensation therefor; or
- c. waiving POKO's repeated defaults of the LDA as amended, for its own benefit, while permitting POKO to default on its contract with plaintiff, DIAS; or
- d. permitting construction on Phase II property with said modified site plan without the purchase or taking of Phase I property, with specific reference to the Premises.

THIRD COUNT: (Special Relationship, Unjust Enrichment)

1. - 32. Paragraphs 1. - 32. of the FIRST COUNT are incorporated into this the THIRD COUNT, as if fully restated herein.

33. By virtue of the LDA and LDA as amended, there became a definite relationship between defendants, CITY and AGENCY, and plaintiff, DIAS, as the owner of a property

essential thereto and listed as a property to be acquired.

34. Said relationship related to the ownership and control of plaintiff, DIAS' Premises.

35. Following the default of plaintiff, DIAS' contract by POKO, defendants, CITY and AGENCY, had an equitable duty to protect plaintiff, DIAS, and acquire plaintiff's Premises.

36. By its failure to do so, defendants, CITY and AGENCY, have been unjustly enriched.

The Plaintiff. John Dias

By

A handwritten signature in black ink, appearing to read "Dan Benjamin", written over a horizontal line.

Daniel A. Benjamin, Esq.  
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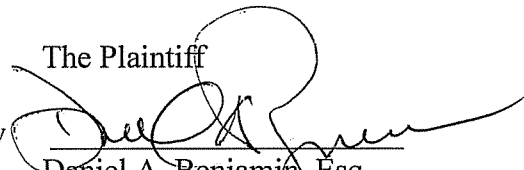


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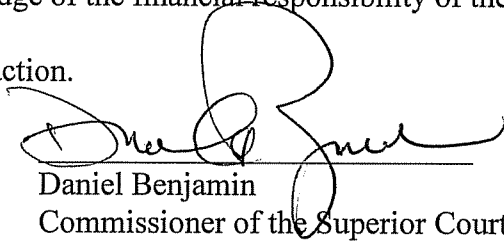
**CLAIM FOR RELIEF**

Wherefore, plaintiff, DIAS, claims the following relief:

1. Just compensation for the taking of said Premises;
2. Reasonable attorneys' fees, expenses of the action, and costs;
3. Restitution; and
4. Such other equitable remedies as are just and reasonable.

The Plaintiff  
 By   
 Daniel A. Benjamin, Esq.  
 Benjamin, Gold & Troyb, P.C.  
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 Stamford, CT 06901  
 Juris No. 408377  
 Phone: (203) 425-8500  
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I hereby certify that I have knowledge of the financial responsibility of the Plaintiff and deem it sufficient to pay the costs of this action.



Daniel Benjamin  
Commissioner of the Superior Court



**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**  
**EXHIBIT A**  
**Property Description**

ALL THAT CERTAIN piece or parcel of land, with the buildings thereon, situated in the City of Norwalk, County of Fairfield and State of Connecticut, and bounded and described as follows:

BEGINNING at a point on the northerly side of Isaac Street at the division line between the premises herein described and the premises next adjoining on the west thereof, now or formerly owned by the Estate of Edward M. Gans; running thence along said last mentioned division line, north 33° 3' 30" east; 52.67 feet; thence north 32° 45' 20" east 1.70 feet to a point thence along lands of Seymour Berman and Lillian Mulwitz, Trustees, south 27° 32' 30" east 10.20 feet; thence along the division line between the premises therein described and the premises adjoining on the north thereof, owned by Seymour Berman and Lillian Mulwitz, Trustees, as aforesaid, north 63° 38' east 35.70 feet, thence along lands between the premises herein described and lands of Knickerbocker Chappaqua Corporation, north 66° 37' 50" east 49.89 feet; thence along the southerly line of a ten foot right of way north 66° 20' 45" east 3.60 feet to the westerly side of of said four foot strip of land as aforesaid, south 25° 35' 10" east 6.37 feet, south 15° 4' east 3.14 feet; southerly 15° 24' east 112.01 feet to the intersection of the westerly side of said four foot strip of land with the northerly side of Isaac Street; thence along said northerly side of Isaac Street north 73° 49' 25" west 154.90 feet to the point or place of beginning.

TOGETHER with the right of way in common with all persons to whom same may have been or shall hereafter be granted, over said strip of land four feet in width adjoining the easterly side of premises hereinbefore described and running to Isaac Street, and also together with the right of way to enter upon a portion of the premises described as the second tract in deed recorded in Volume 322 at Page 436 of the Norwalk Land Records, and so much of a ten foot strip and said four foot strip of land as may be necessary to make repairs to the garage building on premises hereinbefore described as set forth in deed recorded in Volume 322 Page 436; together with a right of way, except for trucks, over a strip of land ten feet in width lying to the north of the land herein conveyed and running northerly to Wall Street; such right of way to be used in common with others to whom the same has been or may hereafter be granted. It is the intent hereof that nothing herein contained shall be construed to divest the grantor of the right which it acquired by virtue of the deed to it recorded in Volume 324 at Page 16, nor to warrant the title to such right of way to the grantees herein, but this conveyance shall be effective to convey such rights of way to the grantees only to the extent that the grantor may do so without affecting the right which it acquired in deed recorded in Volume 324 at Page 16 of the Norwalk Land Records. Together with the right to use the reserve portion of the second tract as set forth in the deed recorded in Volume 201 at Page 11, but subject to all the terms and conditions as set forth in said deed. Said premises are shown on a certain map entitled, "Map of Property Prepared for Mott Motors, Incorporated at Norwalk, Conn., Scale 1" = 10' 1948, " which map is on file in the Town Clerk's Office of the Town of Norwalk under Map No. 2906. Nothing herein contained shall be deemed to be a warranty of the measurements, courses of distances shown on said map; it being the intention hereof to convey to the grantees the first tract as described in the deed recorded in Volume 324 at Page 16, together with the rights of way hereinabove described.